IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3594 of 2006

Vaibhav Shamrao Bhosale & ors. Petitioners
Vs.
Shri Samadhan Digambar Bhosale Respondent

Mr.A.Y.Sakhare, Sr.Counsel with Mr.Siddharth Kapse i/b. Y.K.S. Legal for petitioners.

Ms.Manjiri Parasnis h/f. Mr.G.S.Godbole for respondent.

CORAM: B.H.MARLAPALLE,J.

July 04, 2006.

P.C.

1. Heard the learned counsel for the petitioners who are the defendants in RCS Suit No.163 of 2004. In the said suit the present respondent and plaintiff had filed an application at Exhibit 5 for temporary injunction for restraining the defendants from interfering in lifting the water from the common wall located in Gat No.183/3, for irrigation. The learned Judge of the trial Court on perusal of the record came to a prima facie conclusion that though the well was located in Gat No.183/3, it could not be said that the plaintiff had 1/3rd share in the said well and in the plaintiff's land located in Gat No.183/4 there was a well. The trial Court further noted that in the electric motor of 3 HP installed on the common

well in Gat No.183/3 the plaintiff had 1/3rd share. On these grounds the application for temporary injunction came to be rejected.

2. The plaintiff filed Misc.Civil Appeal No.27 of 2005 and the learned District Judge at Solapur was pleased to allow the same by his judgment and order dated 13th April 2006 and hence this petition.

3. There is no dispute that the land in Gat No.183 admeasuring more than 15 hectares was divided in four parts i.e. Gat No.183/1, Gat No.183/3, Gat No.183/2 and Gat No.183/4. The land in Gat No.183/4 went to the share of plaintiff wheres land in Gat No.183/3 went to the share of the defendants. The learned District Judge noted that on record there were six 7/12 extracts and it was erroneous for the trial Court to get carried away with Mutation Entry No.1024. The 7/12 extracts indicated that in Gat No.183/1 there was a well and the land stood in the name of Vaibhav Shamrao Bhosale i.e. Defendant No.1. Similarly in the land in Gat No.183/4 the 7/12 extract showed one well as well as in the Gat No.183/3 there was a well. However, in the land in Gat No.183/2 which stood in the name of Kumar

Audumber Bhosale, there was no well. The 7/12 extracts further indicated that the wells in Gat No.183/1 and 183/4 were newly dug up wells and the well in Gat No.183/3 was the old original common well which is irrigating the entire land admeasuring 15 H. and 40 Rs. of which 30 Rs. was shown to be occupied by cattleshed before partition. The learned District Judge also noted that when the plaintiff's share in the electric motor to the extent of 1/3rd share was accepted, it was not a portable motor which could be lifted and used for lifting water from the well either in Gat No.183/1 or Gat No.183/4. If the plaintiff had share in the electric motor installed on the well located in Gat No.183/3, this was an additional presumption for prima facie purposes that the plaintiff was lifting water from the common well in Gat No.183/3. Even the written statement filed by the defendants indicated that the plaintiff was lifting water from the well in Gat No.183/3 but he was allowed to do so on account of love and affection. Obviously this was by way an after thought and only to defeat the right of the plaintiff. Nonetheless these are prima facie findings recorded by the learned District Judge who rightly stepped in to correct the errors committed by

the trial Court in rejecting the application for temporary injunction. Hence the challenge to the lower Appellate Court's order in in allowing the application at Exhibit 5 for temporary injunction fails and the petition is hereby rejected summarily.

(B.H.MARLAPALLE,J.)